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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/557,119	04/24/2000	Dimitri Kanevsky	YOR000023US1	8968

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EXAMINER

GOODWIN, JEANNE M

ART UNIT PAPER NUMBER

2841

DATE MAILED: 09/09/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/557,119

Applicant(s)

KANEVSKY ET AL.

Examiner

Jeanne-Marguerite Goodwin

Art Unit

2841

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 May 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-40 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-20 and 32-40 is/are allowed.
- 6) ☒ Claim(s) 21-23 is/are rejected.
- 7) ☐ Claim(s) 24-31 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☒ The proposed drawing correction filed on 27 February 2002 is: a) ☒ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s) _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

2. Claims 21-23 rejected under 35 U.S.C. 102(b) as being anticipated by US 5,928,133 to Halyak.

Halyak discloses a user responsive sleep monitoring and awakening device comprising at least one wire or wireless sleep sensor (12) (see column 4, lines 5-10) which sends data to a control unit (14) having a microprocessor/local computer (20), wherein microprocessors inherently include some form of computer readable program code means, and wherein, the microprocessor (20) stores and compares the data and the control unit (14) allows the user to pick a time interval in which to awakened or to choose a time after which they wish to awakened, the device will then wait until one of these optimal wake up points is reached and then activate an alarm (22), a clock (18) having a timer chip, a display (27), an optional printer to allow the user to have a permanent record of the data from sensor (12) and an optional central processor/network computer may be used by a supervisor of a group to wake the next individual who experiences an optimal wake-up point (see column 5, lines 39-44). In this sense the central processor could act as a sleep analyzer. Furthermore, it has been noted that wide variety of physiological data could be used to accomplish the purpose of the invention, such as EEGs (the electroencephalogram (EEG) is a recording of the low-voltage electrical activity produced in specific regions of the brain. The EEG provides a powerful tool for studying both normal and

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abnormal brain function, and has been commonly used to measure and define wakefulness and sleep), movement, etc., or any other of the common parameters monitored by sleep researchers. With regards to the receiver, the control unit (14) would have a receiving means in order to be able to receive the sleep activity signals sent from the sensor (12). Furthermore, in the normal operation of the Halyak's device, the method of receiving a sleep activity signal, digitizing the sleep activity signal, analyzing the digitized sleep activity signal to identify selected sleep activity periods and other sleep activity periods, waiting for a designated wake up time, determining whether the sleep activity signals indicated that a sleeper is in a period of the selected sleep activity or a period of other sleep activity at the designated wake up time and sounding an alarm at the designated wake up time if the sleep activity signals indicated the selected sleep activity.

Allowable Subject Matter

3. Claims 1-20 and 32-40 allowed.
4. Claims 24-31 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

5. Applicant's arguments with respect to claims 21-23 have been considered but are moot in view of the new ground(s) of rejection.

Furthermore, in response to Applicant's argument that the Examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the Applicant's, such a reconstruction is proper. See *In re McLaughlin*, 443, F.2d 1392; 170 USPQ 209 (CCPA 1971).

Conclusion

6. Any inquiry concerning this communication or earlier communication from the examiner should be directed to Examiner Jeanne-Marguerite Goodwin whose telephone number is (703) 305-0264. The examiner can normally be reached on Monday-Friday (9am-6pm), alternate Fridays off. The fax phone number for the organization where this application or proceeding is assigned is (703) 308-7724. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0956.

JMG
Sept. 8, 2003



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